SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 450

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER, EARL KALKBRENNER, CARROL CHRISTOPHER, VICTOR SWANSON, NICHOLAS KODA, CHARLES SEDERS, ROBERT LAMBORN and ROBERT MURDOCK, JR.
Petitioners

v.

CITY OF JEANNETTE (Pennsylvania), a municipal corporation, and JOHN M. O'CONNELL, individually and as Mayor of City of Jeannette (Pennsylvania)
Respondents

ON CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITIONERS' REPLY BRIEF

HAYDEN C. COVINGTON
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Jurisdiction of the district court is questioned by respondents. We submit that the court will not consider the objection raised because no cross petition was filed. If the court does give consideration to said argument against the jurisdiction of the court then we submit that it is without merit.

Allegations of the complaint were sufficient to invoke jurisdiction of the trial court under Section 24 (14) of

the Judicial Code because the facts pleaded showed that the ordinance in question had been enforced against petitioners in such a manner as to abridge their rights of freedom of speech, press and worship of Almighty God contrary to the "due process" clause of the Fourteenth Amendment and the Civil Rights Act.

In support of this contention we adopt the entire discussion on this point by Judge Maris (R. 150-161) and make the same a part hereof.

The identical complaint containing the same allegations has been questioned many times, held to state a cause of action and to confer jurisdiction upon the district court. Circuit Courts of Appeals have so held twice. *Oney* v. *Oklahoma City*, 120 F. 2d 861; *Manchester* v. *Leiby*, 117 F. 2d 661.

Similar allegations as to fact concerning state action against the right of individuals, together with the claim that such action violated the Fourteenth Amendment, have been held sufficient to confer jurisdiction upon the district court. *May Coal & Grain Co.* v. *Kansas* (CCA-8), 73 F. 2d 345; *Borden's Farm Prod. Co., Inc.* v. *Baldwin*, 293 U. S. 194; *S. Covington Ry. Co.* v. *Newport*, 259 U. S. 97; *Covington & L. Turnpike Road Co.* v. *Sanford*, 164 U. S. 578; *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 305.

From the facts alleged in the complaint it must appear that the claim is so wholly lacking in merit as to be frivolous and patently unsubstantial. It must manifestly be without color or merit. These factors must appear before the court is warranted in holding that jurisdiction does not exist. In *Columbus Ry. Power & Light Co.* v. *Columbus*, 249 U. S. 399, 406, suit was to enjoin enforcement of a city ordinance. In answering the contention

that the trial court did not have jurisdiction this court said:

> "We are of opinion that there was jurisdiction in the District Court to entertain the bill as it presented questions arising under the Fourteenth Amendment to the federal constitution not so wholly lacking in merit as to afford no basis of jurisdiction. Jurisdiction does not depend upon decision of the case, and should be entertained if the bill presents questions of a character giving the party the right to invoke the judgment of a federal court."

In *Mosher* v. *City of Phoenix*, 287 U. S. 29, 30, an injunction suit, this court said:

> "We are of the opinion that the allegations of the bills of complaint, that the city acting under color of state authority was violating the asserted private rights secured by the federal constitution presented a substantial federal question, and that it was error of the District Court to refuse jurisdiction".

In *Lovering & Garrigues Co.* v. *Morrin*, 289 U. S. 103, 105, 108, an injunction suit, this court in discussing the question said:

> "If the bill or the complaint sets forth a substantial claim, a case is presented within the federal jurisdiction, however the court, upon consideration, may decide as to legal sufficiency of the facts alleged to support the claim."

In that case the court held there was no jurisdiction because at the time the suit was filed two cases had been decided adversely to complainant on the identical facts alleged.

At the time the complaint was filed in this case the

Jones v. *Opelika* cases (316 U. S. 584, June 8, 1942, vacated Feb. 15, 1943, and reargument ordered) had not been decided and at such the law was not settled on the question against the petitioners. See *Atkins & Co.* v. *Dunn* (CCA-7), 28 F. 2d 5; *City of Louisville* v. *Louisville R. Co.* (CCA-6), 39 F. 2d 822; *City of Toledo* v. *Toledo Ry. & Light Co.* (CCA-6), 259 F. 450; and *General Investment Co.* v. *New York Central Ry. Co.*, 271 U. S. 228.

It was unnecessary that there be any allegation in reference to amount of money involved because jurisdiction is not claimed under Section 24 (1) but under Section 24 (14) and the Civil Rights Act. The court had jurisdiction on authority of *Hague* v. *C. I. O.*, 307 U. S. 496:

"Due process of law" means the law of the land and is not confined to any particular type or sort of abridgment or action on the part of the state. Since the Civil Rights Act is relied upon to confer jurisdiction all that was necessary to allege was that the respondents acted under color of the ordinance. *More* than this was alleged, and ample facts showing that rights of freedom of press, speech and worship had been abridged contrary to the Fourteenth Amendment, so as to confer jurisdiction under Section 24 (14) of the Judicial Code.

If the doctrine contended for by respondents be sustained, it will be impossible for a litigant to determine when jurisdiction exists under the Judicial Code in the United States District Courts where state action is involved.

Judge Maris speaking for the court below says:

"For were we to hold that jurisdiction exists only if the proven facts justify the conclusion that there has been a deprivation of liberty without due process of

law it would necessarily follow that in every such case the court would have to hear and decide the merits. This would be a manifest absurdity."

The extended facts alleged in the complaint clearly showed that due process of law had been violated by wrongly applying the ordinance so as to abridge the rights of freedom of speech, press and worship guaranteed by the first amendment which is made applicable against the states by the fourteenth.

It is respectfully submitted that the trial court had jurisdiction to entertain the action and that the Circuit Court of Appeals was correct in so holding but was in error in declaring the ordinance did not abridge the rights of petitioners as applied.

Confidently and respectfully submitted,

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